

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 908 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and  
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?
- 1 to 5 - No

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STATE OF GUJARAT

Versus

BACHUBHAI BHALABHAI JOGI

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Appearance:

MR DN PATEL, APP for Petitioner

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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/10/98

C.A.V. JUDGEMENT (Per: R.P.Dholakia,J.)

The respondent-accused was charged and tried by the learned Additional Sessions Judge, Bhavnagar in Sessions Case No.20 of 1997 for the offences punishable under Secs.302, 397, 398 and 201 of Indian Penal Code and Sec.135 of Bombay Police Act wherein at the end of trial, after hearing the learned advocates of respective

parties, the learned trial Judge acquitted the accused on 20-8-1997 against which, the present appeal has been preferred by the State.

2. The case of the prosecution in short is that on 26-9-96, Samjuben, who was staying separately from her children in the Village Sartanpar, District Bhavnagar, went to the field. As she did not return till evening, her son-Mukeshbhai and others started searching her, but could not trace her. On the next day at about 10.30 a.m., Tidiben Monabhai residing in the adjoining field informed Mukeshbhai that Samjuben is lying beneath the lemon tree. After reaching there, they saw the trunk body of Samjuben at one place and her head at some distance. Her two ears were cut off and golden ornaments were taken away. Vasrambhai, uncle of Mukeshbhai, filed a complaint to that effect before the Vartej Police Station and PSI, Mr.Pandya started the investigation. He went to the scene of offence alongwith the dog squad, photographer and an expert from FSL. Inquest panchnama was drawn and further investigations were started. Some muddmalls were recovered and panchnama of place of offence was drawn and thereafter, dead body was sent for post-mortem. Investigating Officer recorded the statement of various witnesses and arrested the accused and discovery panchnama was also drawn. After completing the investigation, Police submitted the charge-sheet against the present respondent-accused. Looking to the gravity of offence, accused was committed to the Court of Sessions at Bhavnagar where it was registered as Sessions Case No.20 of 1997. A charge was framed and accused pleaded not guilty and claimed to be tried.

3. To prove the guilt against the accused, the prosecution examined in all, 20 witnesses. Learned Addl. Public Prosecutor mainly argued that there is no eye witness and there is strong circumstantial evidence connecting the accused. He further argued that the contradictions are minor in nature. He argued that the prosecution proved the case against the accused beyond reasonable doubt and learned trial Judge ought to have convicted the accused.

4. It is established that the case solely relies on the circumstantial evidence. We have gone through the evidence of Tidiben, who has seen the dead body of the deceased which was lying in the field of Kalubhai Amrutlal and who informed the son of deceased Mukeshbhai. We have also gone through the evidence of complainant Vasrambhai, who happened to be uncle of the Mukeshbhai. It appears that they are not the witnesses of incident.

The prosecution also examined one Dhirubhai at exh.49. According to the prosecution, accused is alleged to have informed his plan regarding the incident to Dhirubhai well in advance, but he has not supported the prosecution case at all and he was declared hostile and nothing has come out from his cross-examination which helps the prosecution. Panchas of discovery panchnama and recovery of clothes of accused and recovery of golden ornaments were not proved by the prosecution. Regarding the recovery of golden ornaments, Rasminkumar Soni examined at exh.40 stated that the said ornaments were given by Head Constable and he has examined the same at Village Bhandaria whereas according to the prosecution, Rasminkumar Soni was called on the spot. So, above witnesses do not support the say of the prosecution. Kalubhai Amrutlal, who is the owner of the farm from where the dead body of deceased was found, stated in his evidence that accused was his employee who was working in the said field. He has categorically deposed that on the date of incident, as he was suffering from fever, he was at home. He has further deposed that on that day at night, his son Kamlesh and two others were also there in the field. It is established that there are no eye witnesses to the incident and circumstances do not connect the accused with the crime. Hence, the order of acquittal recorded by the learned trial Judge is proper and no interference is required to be made.

5. This Court has carefully gone through the evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; ((2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (AIR 1934 PC 227).

6. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS.

HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

7. Based on the above two observations and the facts and circumstances of the case, appeal is dismissed.

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